

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

H.C., et al.,

Plaintiffs,

v.

COUNTY OF KERN, et al.,

Defendants.

Case No. 1:21-cv-00142-JLT-SAB

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
FOR FAILURE TO COMPLY WITH
COURT ORDERS AND FAILURE TO
PROSECUTE**

(ECF Nos. 27, 28)

I.

INTRODUCTION AND BACKGROUND

Minor Plaintiffs H.C. and A.C., as successors in interest to Graciano Ceballos, by and through their guardian ad litem Dolores Hernandez; and adult Plaintiffs Ashley Ceballos, Emma Ceballos, and Edward Ceballos, proceed in this action alleging excessive deadly force by sheriff deputies against Graciano Ceballos, and violations of various federal civil rights and state laws. (ECF No. 2-1 at 2-34.)

On August 8, 2022, the Court granted a motion for withdrawal of counsel, and Plaintiffs' former counsel were terminated from this action. (ECF No. 25.) The basis of the motion was former counsel's proffer that: counsel had made an evaluation and recommendations to Plaintiffs regarding how to proceed with this case; that counsel advised Plaintiffs as to important decisions regarding the case; that the recommendations relate to fundamental issues in the case and how

1 such issues are to be resolved; that regretfully, Plaintiffs had refused to follow the advice given
2 by counsel as to these important decisions and had failed to follow the recommendations of
3 counsel; that given the failure to follow the recommendations, counsel could not continue to
4 serve as counsel in this matter; and submitted that counsel and Plaintiffs were at an impasse with
5 respect to important decisions regarding the prosecution of this action, and given the impasse,
6 counsel could not further pursue the prosecution of this case on behalf of Plaintiffs. (See ECF
7 Nos. 20 at 3-4; 25 at 5-6.)

8 Plaintiffs are now proceeding *pro se*. On September 16, 2022, the Court set a status
9 conference to be held on September 28, 2022, at the Defendants' request. (ECF Nos. 26, 27.)
10 The order contained information on multiple methods of attending the status conference as well
11 as indicated assistance could be obtained by contacting the Courtroom Deputy, however,
12 Plaintiffs did not appear via videoconference, nor in person at the courthouse, nor did they
13 attempt to contact the Court. (ECF Nos. 27, 28.)

14 Given Plaintiffs' nonappearance at the September 28, 2022 status conference, on
15 September 28, 2022, the Court issued an order to show cause requiring Plaintiffs to provide a
16 written response by October 12, 2022, and requiring the Plaintiffs' personal appearance in court
17 on October 19, 2022, to show cause to the Court as to why sanctions should not be imposed for
18 the failure to appear at the September 28, 2022 status conference, and for the failure to prosecute
19 this action. (ECF No. 29.) The Court's order additionally indicated that the Court would
20 consider vacating the October 19, 2022 hearing if the Court received a sufficient written
21 response. (Id. at 2 n.1.) The order stated that the failure to comply with the order would result in
22 the imposition of sanctions, including up to dismissal of this action. (Id. at 3.) The order again
23 provided the contact information for the Courtroom Deputy and notified the Plaintiffs that they
24 may contact the Courtroom Deputy with any questions or to obtain assistance in complying with
25 order. (Id. at 3 n.2.)

26 II.

27 LEGAL STANDARD

28 The Federal Rules of Civil Procedure provides that the underlying purpose of the rules is to

secure the just, speedy and inexpensive determination” of an action. Fed. R. Civ. P. 1. To effectuate this purpose, the rules provide for sanctions against parties that fail to comply with court orders or that unnecessarily multiply the proceedings. See, e.g., Fed. R. Civ. P. 16(f); Fed. R. Civ. P. 37(b). Rule 16(f) authorizes the Court to issue any just order if a party or attorney fails to obey a scheduling or other pretrial order.

The Court also possesses inherent authority to impose sanctions to manage its own affairs so as to achieve the orderly and expeditious disposition of cases. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991). The Court’s inherent power is that which is necessary to the exercise of all others, including to protect the due and orderly administration of justice and maintain the authority and dignity of the Court. Roadway Exp., Inc. v. Piper, 447 U.S. 752, 764 (1980). In order to coerce a party to comply with the Court’s orders, the Court may issue sanctions for every day that party fails to respond to the Court’s orders to show cause. See Lasar v. Ford Motor Co., 399 F.3d 1101, 1110 (9th Cir. 2005) (discussing court’s authority to impose civil sanctions “intended to be remedial by coercing the defendant to do what he had refused to do.”). The Local Rules of the Eastern District of California provide that “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” E.D. Cal. L.R. 110.

A court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

“In determining whether to dismiss an action for lack of prosecution, the district court is

required to consider several factors: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.’ ” Carey, 856 F.2d at 1440 (quoting Henderson, 779 F.2d at 1423). These factors guide a court in deciding what to do, and are not conditions that must be met in order for a court to take action. In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006).

III.

DISCUSSION

The Ninth Circuit has stated that it “may affirm a dismissal where at least four factors support dismissal... or where at least three factors ‘strongly’ support dismissal.” Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (quoting Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir.1998)). The Court finds three of the factors strongly support dismissal here.

1. Public Interest in Expeditious Resolution of Litigation and the Court’s Need to Manage its Docket

Defendants have attempted to communicate with Plaintiffs concerning continuing scheduling deadlines but Plaintiffs have not communicated with Defendant. (ECF Nos. 26, 28.) The Plaintiffs failed to appear at the September 28, 2022 status conference, and have not contacted the Court, despite ample information provided in the order setting the status conference. (ECF Nos. 27, 28.) Plaintiffs failed to appear at the October 19, 2022, show cause hearing, and have not contacted the Court. Accordingly, in this instance, the public’s interest in expeditious resolution of the litigation and the Court’s need to manage its docket weigh in favor of dismissal. In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d at 1226. This action can proceed no further without Plaintiffs’ compliance and their failure to comply indicates that Plaintiffs do not intend to diligently litigate this action.

2. Prejudice to the Defendant

Since it appears that Plaintiff does not intend to litigate this action diligently there arises a

rebuttable presumption of prejudice to the Defendants in this action. In re Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994). The risk of prejudice to the Defendants thus weighs in favor of dismissal. This risk of prejudice may be rebutted if Plaintiffs offer an excuse for the delay. In re Eisen, 31 F.3d at 1453. Given Plaintiffs failures to appear and absence of any contact with the Court, the Court finds Plaintiffs have failed to rebut the presumption of the risk of prejudice to Defendants. Accordingly, the Court finds the risk of prejudice to the Defendants also weighs in favor of dismissal. Morris v. Morgan Stanley & Co., 942 F.2d 648, 651 (9th Cir. 1991) (“failure to prosecute diligently is sufficient by itself to justify a dismissal, even in the absence of a showing of actual prejudice to the defendant from the failure.”) (quoting Anderson v. Air West, Inc., 542 F.2d 522 (9th Cir.1976)).

3. Public Policy in Favor of Deciding Cases on the Merits

The Court finds this factor weighs slightly against dismissal. However, the Court finds on the whole, the public policy in favor of deciding cases on their merits is outweighed by the factors in favor of dismissal. It is Plaintiffs’ responsibility to move this action forward. In order for this action to proceed, Plaintiffs are required to communicate with the Defendants, and comply with the Court’s orders. Despite being ordered to do so and the Court granting opportunities to address this action before the Court, Plaintiffs have not done so, and this action cannot simply remain idle on the Court’s docket, unprosecuted. In this instance, this factor does not outweigh Plaintiffs’ failure to comply with the Court’s orders and failure to prosecute.

4. Availability of Lesser Sanctions

Finally, a court’s warning to a party that their failure to obey the court’s order will result in dismissal satisfies the “consideration of alternatives” requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424.

The Court’s September 28, 2022 order expressly warned that the failure to provide a written response by October 12, 2022, and to appear at the October 19, 2022 show cause hearing, would result in the issuance of sanctions, including up to dismissal of this action. Thus, Plaintiffs had warning that dismissal may result from noncompliance with the Court’s orders, and the Court provided various methods of attending the hearings, and to contact the Court, but

1 Plaintiffs did not appear or file a written response as ordered to do so.

2 5. The Court finds the Factors Weigh in Favor of Dismissal

3 The Court finds that the balance of the factors weighs in favor of dismissing this action
4 for Plaintiff's failure to comply with the Court's orders and for failure to prosecute. The Court
5 shall recommend that this action be dismissed for failure to prosecute and failure to comply with
6 the Court's orders.

7 **IV.**

8 **RECOMMENDATION**

9 In considering the factors to determine if this action should be dismissed, the Court finds
10 that the factors weigh in favor of dismissal of this action, and that this action should be dismissed
11 for Plaintiffs' failure to obey the Court's orders, and failure to prosecute this action.

12 Accordingly, IT IS HEREBY RECOMMENDED that this matter be dismissed for
13 Plaintiffs' failure to comply with the Court's orders and failure to prosecute.

14 These findings and recommendations are submitted to the district judge assigned to this
15 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **fourteen**
16 **(14) days** of service of this recommendation, Plaintiff may file written objections to the findings
17 and recommendations with the court. Such a document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." The district judge will review the
19 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).
20 Plaintiff is advised that failure to file objections within the specified time may result in the
21 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
22 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24 Dated: October 19, 2022

25 
UNITED STATES MAGISTRATE JUDGE